unique in our time. In the last years of Langdell's life the same keen analytical power was applied to the leading conceptions of equitable jurisdiction. The little book on Equity Pleading published many years earlier is still not much known among English lawyers, but it goes to the root of the matter far more thoroughly than any other modern treatise known to us, though probably there is no other so short."

THE LAW SCHOOL. — Principally owing to the ill health of Professor Brannan, several changes have been made in the leadership of the courses. Mr. P. L. Miller, of last year's REVIEW board, will give Bills and Notes, and Professor Beale will give Damages. Dean Ames will conduct the course in Partnership, and Mr. C. F. Dutch, of the 1905 REVIEW board, the course in Equity III. Whether Quasi-Contracts will be given will probably depend upon Professor Brannan's ability to resume his duties in the middle of the year. In the extra courses Mr. A. R. Campbell, of the 1902 REVIEW board, will lecture on New York Practice, and Mr. J. L. Stackpole, of the 1898 REVIEW board, will give a course in Patent Law. Professor Winter has returned, and will conduct classes in Voice Training and Extemporaneous Speaking.

LACK OF MUTUALITY OF REMEDY AS A DEFENSE TO SPECIFIC PERFORMANCE. — By the old orthodox rule, unless the defendant should in turn be entitled to an equitable remedy, the plaintiff took nothing by his bill for specific performance.[1] This remedy must have existed when the contract was made. Subsequent accrual of it to the defendant did not add the requisite mutuality;[2] subsequent loss of it to him, even by act of God,[3] much less by his own laches,[4] did not remove it. Two classes of exceptions were allowed. It was an answer to the plea that the plaintiff, though not so compellable in equity, had performed in full;[5] likewise, that he had elected to proceed with a contract voidable at his option.[6] Thoughtful courts have in part demolished these artificial rules. Mutuality of *equitable* remedy is no longer generally demanded,[7] nor need it exist at the time of the bargain.[8] A recent federal decision, however, restates the former of these discredited doctrines. *General Electric Co.* v. *Westinghouse Electric Co.*, 144 Fed. Rep. 458 (Circ. Ct., N. D. N. Y.).

In passing upon a bill for specific performance, certain considerations must commend themselves to the Chancellor. If the defendant has already had full performance, it no longer lies in his mouth to talk remedies. Further, if some remedy lie open to him, adequate either to assure him counter-performance or to compensate him on breach, he may not be heard to quibble over the precise form it shall take.[7] Still less is it an

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1 Cooper *v.* Pena, 21 Cal. 403.
2 Norris *v.* Fox, 45 Fed. Rep. 406.
3 Stapilton *v.* Stapilton, 1 Atk. 2; Moore's Admrs. *v.* Fitz Randolph, 6 Leigh (Va.) 175.
4 Eastern Counties Railway Co. *v.* Hawkes, 5 H. L. Cas. 331.
5 Univ. of Des Moines *v.* Polk County Homestead & Trust Co., 87 Ia. 36.
6 See Ames, Mutuality in Specific Performance, 3 Columbia L. Rev. 1, and cases cited.
7 Northern Central Railway *v.* Walworth, 193 Pa. St. 207; Lamprey *v.* St. Paul & Chicago Railway, 89 Minn. 187.
8 Blanton *v.* Ky. Distilleries Co., 120 Fed. Rep. 318.

answer that he was once remediless. Equity distinguishes between unfair, one-sided bargains, and fair, two-sided bargains which, because of wise policy of law, one party may elect to repudiate. Equity refuses to aid the former, but she would be untrue to herself if she made a preliminary disability in the latter, removable by election to proceed, pretext for staying her hand. Although all this is now generally well settled, confusion still arises from failure to distinguish from true lack of mutuality defenses grounded on the unfair consequences of specific performance. In granting the plaintiff the largest measure of equitable relief courts must look at the situation which a decree will create. It must not be such as to prejudice the defendant's chances of obtaining his equivalent. A ball-player must not be enjoined from playing on another team if, upon his later repentance and his manager's refusal again to employ him, he may find the decree has lost him his market. That the plaintiff in such cases takes nothing by his bill is due, not to the like-for-like doctrine of the old law, but to the unfair consequences to the defendant's position that might flow from the decree.

Some contracts, however, from their nature admit on one side of adequate remedy at law or in equity, but not on the other, as in the case of an agreement to supply a peculiar chemical compound.[9] Nothing short of voluntary performance can cure the inherent infirmity of one party's position. But here it is argued that if specific performance to the plaintiff work no prejudice to the defendant's position, involve neither payment of consideration without security for the equivalent nor forfeiture of market, the defendant's plight must not restrain the chancellor. The bargain is of his own seeking. The decree will not add to his sorrows. Performance, though specifically decreed to the plaintiff, will be *pari passu*. Self-help will bar forfeiture, for if ever the plaintiff cease to perform, the defendant will be instantly discharged from operation of the decree. It is submitted that this is the true case of lack of mutuality of remedy. The machinery of equity is here working a real preference by giving the plaintiff the whip-hand. At pleasure he can drive on the bargain or elect to halt. The defendant's initiative is paralyzed. He must take his cue from the caprice of the plaintiff and damages at law cannot satisfy.[10] It would seem that along with the non-weakening of the defendant's position there should also exist some compelling policy of public welfare to incline equity to increase this inequality between the parties by granting specific performance to the plaintiff.

"DUE PROCESS OF LAW" IN STATUTORY REMEDIES AGAINST UNINCORPORATED ASSOCIATIONS. — The inconvenience under modern business conditions of the common law doctrine that an unincorporated association, being merely a large partnership, can sue and be sued only in the names of all its individual members has led to much legislation altering more or less the common law procedure.[1] Some statutes provide for suits against associations (or partnerships) in the associate names, service of process on the officers or other associates, and judgments binding the associate property,

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[9] Hills *v.* Croll, 2 Phill. 60.

[10] On this ground are most vulnerable such cases as Lumley *v.* Wagner, 1 De G. M. & G. 604, allowing specific performance of negative provisions collateral to affirmative contracts themselves unenforcible in equity.

[1] See Dicey, Parties, 148, 266.